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March 14, 2001

BY HAND DELIVERY

David Waddell
Executive Secretary
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243


Re: *Universal Service*
Docket No. 97-00888

Dear Mr. Waddell:

Pursuant to the February 21, 2001, Director's Conference, enclosed are an original and thirteen copies of AT&T's Comments in the above-captioned proceeding.

Thank you for your assistance in this matter. If you have any questions, please do not hesitate to call me.

Sincerely,


Jim Lamoureux

Encls.

cc: Richard Collier, Esq.

**BEFORE THE
TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE**

In Re:)	
)	
UNIVERSAL SERVICE GENERIC)	Docket No. 97-00888
CONTESTED CASE)	
)	

COMMENTS OF AT&T

During the Director's Conference on February 21, 2001, the Tennessee Regulatory Authority ("TRA") requested parties to this Docket to file briefs and/or comments on several issues identified by the TRA. As such, AT&T Communications of the South Central States, Inc. and TCG MidSouth, Inc. ("AT&T") hereby submit the following comments.

**I. NO CURRENT NEED FOR A UNIVERSAL SERVICE FUND IN
TENNESSEE**

AT&T does not believe a state universal service high cost fund is warranted at this time in Tennessee. T.C.A. § 65-5-207 does not require the TRA to establish a fund; rather, it requires that the TRA "formulate policies, promulgate rules and issue orders which require all telecommunications service providers to contribute to the support of universal service." Moreover, no provision of T.C.A. § 65-5-207 specifically refers to a fund. Instead, T.C.A. § 65-5-207 (b) –(d) refer to universal support "mechanisms." The TRA certainly can ensure the continued support of universal service in Tennessee, and at

the same time consider the possibility of alternative mechanisms for that continued support, without having to establish a universal service fund.

Before considering an intrastate universal service fund of any size, the TRA should carefully examine the need for such a fund. In this case BellSouth Telecommunications, Inc. (“BellSouth”) and Sprint/United Telephone- Southeast (“United”) (hereinafter collectively referred to as “Incumbent Local Exchange Companies” or “ILECs”) completely fail to make a showing of any immediate need for an intrastate universal service fund. The ILECs are profitable companies, serving profitable residential customers and there is no reason for the Authority to create a fund to subsidize their operations.

The purpose of a universal service fund is to protect ILEC revenue streams that historically provided subsidies to support basic local exchange service from the erosive effects of competition. If those existing revenue streams are not threatened by competitive inroads, then a universal service fund is not necessary. Indeed, as long as the ILECs are doing everything they can to prevent the development of competition, it is wholly inappropriate to set up a mechanism in the form of a universal service fund to protect them from the impact of competition.

Consequently, the real question the Authority must address in this proceeding is whether existing market conditions are such that ILEC revenue streams are immediately threatened by the onslaught of competitive activity in Tennessee. The evidence proves that the answer is emphatically NO. The ILECs have made no attempt to explain exactly what support mechanisms are in jeopardy or precisely how competition has affected

them. The amount of competition in Tennessee is not significant now nor will it be in the near future.

The fact that the ILECs have not filed an application for a general rate case for many years provides additional compelling evidence that universal service is not being threatened by competition at this time. BellSouth, for example, agreed to freeze its basic local rates for a period of five years in order to obtain reduced regulation. In addition, BellSouth has agreed to reduce its access charges to 1.5 cents per minute and will soon reduce them to .8 cents per minute. The rate freeze and significant access reductions were all accomplished without the need of creating a universal service fund. And despite these activities, the companies have expressed no indications during the past several years that they are unable to earn a reasonable rate of return. Earning at a reasonable level means that they are covering their costs (including the cost of universal service) and earning a fair profit.

Before potential competitors will make a decision to enter the market in Tennessee, they must be *able* to enter the market. Where the means for providing local service, such as facilities, interconnection, operations support systems, unbundled network elements (“UNEs”), and UNE combinations are not readily available, competition cannot develop. That is exactly the case in Tennessee. Adequate operational support systems are necessary so that customers can transparently move from one local provider to another as easily as they can move among long distance providers. These systems do not exist for BellSouth or any other ILEC in Tennessee.

Before this Authority gives serious consideration to the establishment of a high cost universal service fund to protect ILEC revenue streams from competitive erosion, it

should focus its attention on making sure the conditions that will allow competition to develop are in place. Otherwise, the TRA will have established a large fund from which only the ILECs will be able draw revenues. Such a result will be harmful to consumers and detrimental to the public interest.

II. OMITTED REVENUES

The TRA's ability to determine the need for an intrastate universal service fund is also obscured by the data provided in the ILECs' responses. In determining which revenues to consider in calculating Tennessee's universal service needs, BellSouth and Sprint have omitted an important source of available revenues. When all relevant revenues are included in the analysis, it is clear that there is no current need for an intrastate universal service fund in Tennessee.

The amount of support calculated in the attachments to the ILECs' responses is based on a "sum of the negatives," without taking into consideration the wire centers where revenues exceed costs. In other words, the information the ILECs have supplied for determining the size of a fund adds the deficits of all wire centers where costs exceed revenues, but does not consider the surplus amounts from wire centers that generate revenues in excess of costs. This process omits consideration of revenues that are lawfully required to be considered by the TRA, and results in grossly overstating Tennessee's universal service needs.

In the attachments to BellSouth's response (Attachments 1 and 4), BellSouth does not even acknowledge the existence of wire centers that produce revenues in excess of costs. Although United appears to have listed all of its wire centers in Tennessee on

schedule 1 attached to its response, it shows \$0 under the “Monthly Support” column.

Thus, both United and BellSouth have avoided disclosing revenues that are collected and available and used to support universal service in Tennessee. This approach totally ignores relevant revenue sources that are available to not only the ILECs but also to CLECs. To remedy this, the TRA should require BellSouth and United to supply data for all wire centers and consider both the deficits and the surpluses.

Tennessee law requires the inclusion of revenue from wire centers that provide a positive contribution. TCA § 65-5-207(b) requires the Authority to “determine *all* current sources of support for universal service and their associated amounts[.]” (Emphasis added). The intent of the statute is clearly to consider all sources of revenues in assessing the universal service needs of Tennessee. The use of the language “all sources of revenue” requires that BellSouth and United disclose the amount of revenue associated with wire centers that have net revenues that exceed costs. In addition to being required by law, the inclusion of such revenues is consistent with past rulings by the Authority. In its September 22, 2000 Order in this docket, the TRA stated that it is appropriate to include revenue from additional residential lines and non-recurring charges, because these are revenues that a potential market entrant could expect to receive:

While the Authority’s May 20, 1998 Order on Phase I did not specifically identify non-recurring charges, it clearly stated that revenues from virtually all residential services should be included. These revenues represent charges that a company assesses its customers for installation services and subsequent changes to service; therefore, these revenues would be considered portable. Additionally, a potential competitor could expect that some of its residential customers would order additional lines. (Order at p. 9)

Likewise, Yellow Page revenues were excluded because “competing firms cannot reasonably expect to capture yellow page revenues that flow to the incumbent LEC.”

The same rationale applies to those wire centers that have revenues that exceed costs. Because potential market entrants can expect to receive revenues from those wire centers and because these revenues fit the definition of “all current sources of support for universal service” as set forth in the statute, the Authority must consider those revenues in determining the universal services needs of Tennessee

The “netting” of wire centers is clearly appropriate in the absence of robust competition in the local exchange market (as currently is the case in Tennessee) and would result in reducing the size of the fund. T.C.A. § 65-5-207 (b) specifically directs the TRA to consider the need for modifying current universal service support mechanisms. The lack of robust competition in Tennessee certainly eliminates any such need. In a recent universal service decision the Georgia Public Service Commission¹ considered this very same issue and concluded:

The contribution from the low cost wire centers should be weighed against the deficit from the high cost wire centers to determine the estimated need for universal service support. If the contributions from the low cost wire centers exceed the deficit of the high cost wire centers, then the carrier has not demonstrated a need for Universal Access Fund support. (Order at p. 2)

The Commission does not find the incumbent local exchange carriers’ arguments compelling that competition in the higher density, low cost wire centers is rapidly eroding the historical contributions that have allowed the ILECs to maintain universal service in the high cost areas of their service territory. The widespread development of robust competition in the urban, low cost wire centers should have the effect of driving BellSouth’s revenues closer towards the costs of providing such services. But,

¹ In Re: Docket No. 5825-U, Universal Access Fund, Transition to Phase II Pursuant to O.C.G.A. § 46-5-167, Order, January 17, 2001.

as is evident from the analysis presented by the parties and conducted by Staff, the contribution provided from the low cost wire centers exceeds the deficits generated by the high cost areas many times over.

The Commission recognizes that the current level of contribution may not endure as all markets for telecommunications services throughout the State become more contested and mature. Thus, the Commission shall monitor the statewide basic local service revenue/cost relationship in order to be in a position to respond quickly in the event an ILEC is able to demonstrate a need for universal service support. At the Commission's direction, an intrastate universal access fund can be implemented in a short timeframe in order to meet an incumbent local exchange carrier's demonstrated need for universal service support. (Order at p. 34)

Consequently BellSouth and United should be required to provide data for all wire centers including those where the revenues exceed costs and the TRA should consider those revenues in determining Tennessee's universal service needs.

III. CONSIDERATION OF SUPPORT FROM THE FEDERAL UNIVERSAL SERVICE ACCESS FUND

If the TRA determines to implement a fund based on the cost data and revenue benchmark information submitted by BellSouth and United as ordered by the TRA in the February 21, 2001, Director's Conference, the support received from the new federal universal service access fund should be considered in the calculation of the state fund. This would be consistent with the TRA's decision in Phase II of this Docket.² It is both appropriate and necessary to fully recognize this source of revenue for the ILECs.

² In its Interim Order On Phase II Of Universal Service, the TRA determined "the minimum Universal Service support is the total difference between the cost and the revenue benchmark summed over the wire centers in which cost exceeds revenue, *less federal support*." (Emphasis added)

BellSouth's filing on March 7, 2001 indicates it will receive \$7.236 million in federal universal service access support in 2001. BellSouth's Attachments 1 and 4 show BellSouth claims support requirements of \$51.049 million without CALLS and \$47.799 with CALLS, a difference of \$3.25 million. With the methodology used by BellSouth, BellSouth gets to "keep" \$3.986 million in federal revenues without adjusting the intrastate fund. This further shows the need to include all sources of revenues, including wire centers where revenues exceed costs in determining the need for state universal service high cost fund.

IV. TELECOMMUNICATIONS RELAY SERVICE

Telecommunications Relay Service benefits all Tennesseans and should be supported on as broad a base as possible. Current support for this service is provided through assessments only on long distance service providers and ultimately long distance service users. AT&T supports revising this funding mechanism. AT&T recommends the TRA establish an identified line item charge on local subscriber bills to explicitly fund Telecommunications Relay Service. If the TRA chooses not to establish funding in this manner, AT&T would support the inclusion of Telecommunications Relay Service in Universal Service.³

³ The evidence and current competitive environment do not warrant the establishment of a high cost universal service fund. However, a universal service fund could be established with components for TRS, lifeline and/or educational credits.

V. ADVANCED SERVICES

AT&T does not support the use of universal service funds to deploy or accelerate the deployment of any advanced services. Advanced services such as DSL service are currently considered enhanced by the FCC and as such are not currently on the retail side regulated by the state regulatory agencies. Additionally, if the deployment of advanced services is included in a state USF fund, then those companies that are deploying advanced services (such as cable companies and wireless companies) will be disadvantaged in that they will not be able to receive any support for their deployment. AT&T recommends the TRA allow market forces continue to be the impetus to the deployment of advanced services. There has been tremendous growth in advanced service in rural company areas.⁴ According to an Economics and Technology, Inc. study on broadband deployment in rural areas, "rural communities and their residents are *not* becoming orphans of the information age, but are full-blown participants with access to the same services and capabilities – and at roughly the same costs – as their urban cousins."⁵ While the large incumbent LECs have concentrated their efforts on the low-cost upgrades to urban and suburban distribution networks to accommodate the introduction of DSL, smaller LECs, and cable, wireless and satellite operators have been

⁴ See *Communications Daily* (November 10, 1999) (National Telephone Cooperative Association study shows that small rural telcos . . . have infrastructure in place to offer advanced services to those areas . . . [and that] "[t]he so-called 'digital divide' is greatly exaggerated with respect to areas served by small telephone companies"); see also Comments of AT&T Corp., filed March 20, 2000, in *Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable And Timely Fashion, and Possible Steps To Accelerate Such Deployment Pursuant To Section 706 of the Telecommunications Act of 1996*, CC Docket No. 98-146, at 19-21, 28-30; *id.* Reply Comments, filed April 4, 2000, at 4-6.

⁵ Economics and Technology, Inc., *Bringing Broadband to Rural America: Investment and Innovation in the Wake of the Telecom Act* at 43 (Sept. 1999), filed with the Commission in CC Docket 98-147 on September 10, 1999. See also John Borland, *Firms Target Rural Communities for Broadband*, CNET News (Feb. 4, 2000) <<http://news.cnet.com/news/0-1004-200->

concentrating on broadband deployment in precisely those communities that the large ILECs have tended to ignore.⁶ Thus, the National Rural Telecommunications Association, the National Telephone Cooperative Association, and the Organization for the Promotion and Advancement of Small Telecommunications Companies demonstrated in the Federal Communication Commission's Section 706 proceedings that their members are actively deploying advanced telecommunications capability to rural America in a reasonable and timely manner.⁷

The TRA should not try to predict the specific outcomes of the competitive process by favoring any technology or adopting its own deployment timetable. Instead, they should rely on the free market and private enterprise to deploy services. The Act has already established a set of duties and rights that if fully implemented will allow new entrants to compete and deploy the facilities to provide advanced services. Because no one can predict the specific outcome of that competitive process, no attempt should be made to outguess the market.

Nor should universal service support be provided for secondary residential lines as a possible means to encourage the deployment of advanced services. Such support would discriminate against other technologies that may provide advanced services, such as, cable, satellite, and wireless technology. Support for second lines would be contrary to guidelines, federal and state, for the determination of services eligible for universal service support. In its Interim Order on Phase I of Universal Service, the TRA states:

[1541543.html](#)> (discussing strategies of New Edge Networks, Jato Communications, DSL.Net, and OneMain.com to bring high-speed access to small towns).

⁶ *Bringing Broadband to Rural America* at 42.

⁷ See Comments, in CC Docket No. 98-146, filed March 20, 2000, by NRTA at 2, 7-9; NTCA at 5-6; OPASTCO at 5-6.

Also, intrastate support will only be provided on residential customers' primary (first) line and not additional lines. In establishing criteria for determining support, Congress stated in the Telecom Act that the FCC should consider the extent to which telecommunications service "have through the operation of market choices by customers, been subscribed to by a substantial majority of residential customers." The Authority concluded that this is also an appropriate criteria for intrastate universal service. At this time the majority of residential customers have only one phone line.

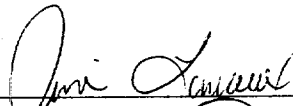
AT&T recommends the TRA use caution before including as part of universal service support funding for investments to deploy advanced services in rural areas. There is no reason to believe that the need for advanced services in rural areas is any different from urban areas. The definition of supported services should not be expanded without making the type of finding required of the FCC -- namely, that such services are "(A) are essential to education, public health, or public safety; (B) have, through the operation of market choices by customers, been subscribed to by a substantial majority of residential customers; (C) are being deployed in public telecommunications networks by telecommunications carriers; and (D) are consistent with the public interest, convenience, and necessity."⁸ Before considering expanding the definition of services subject to high cost support, the deployment of advanced telecommunication services in urban areas should be monitored and determinations should be made regarding how widespread their use is by urban customers.

⁸ 1996 Telecommunications Act, Section 254(c)(1)

VI. LINE SHARING

To the extent that line sharing would have any impact on the need to support second lines by an intrastate universal service fund, it has a negative impact. With line sharing, a customer can obtain plain old telephone service as well as advanced services over the same telephone line; a second line is not needed for access to advanced services. Therefore there would be no reason to have a second line or to provide support for a second line in order to access advanced services. Any additional revenue obtained by the ILEC as a result of line sharing or the provision of advanced services over the same telephone line should also be included in the calculation of universal service requirements.

Respectfully submitted,



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Dated: March 14, 2001

CERTIFICATE OF SERVICE

I hereby certify that on March 14, 2001, a copy of AT&T's Comments was served on the following parties of record, via U.S. Mail, postage pre-paid, addressed as follows:

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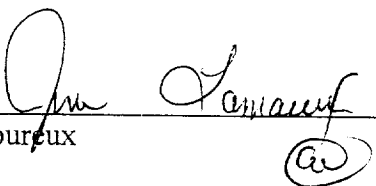
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